

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAIME TAPIA SERVIN,
Petitioner,

v.

CYNTHIA Y. TAMPKINS,
Respondent.

Case No. [19-cv-01873-VC](#) (PR)

**ORDER OF DISMISSAL WITHOUT
PREJUDICE**

This is a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 filed by California inmate Jaime Tapia Servin. On August 13, 2019, the Court dismissed the petition with leave to amend because Servin had not alleged a violation of the Constitution or laws of the United States and because he had not exhausted any claims. The Court granted Servin permission to file an amended complaint with a motion for a stay and abey under *Rhines v. Weber*, 544 U.S. 269 (2005), with instructions about how to do so. On September 9, 2019, Servin filed a motion for a stay, but it did not meet the requirements set forth in *Rhines*. The Court denied the motion without prejudice so that Servin could correct the noted deficiencies.

On October 21, 2019, Servin filed an amended petition with a motion to stay and abey, but again he did not meet the *Rhines* requirements. On December 19, 2019, the Court dismissed the second motion to stay and abey with instructions about how to correct the deficiencies. The Court stated that, if Servin did not file a third motion for a stay and abey within 28 days from the date of the Order, the petition would be dismissed without prejudice to Servin filing a new petition in the future with only exhausted federal claims.

The 28-day deadline has passed and Servin has not filed another motion or

communicated with the Court. Therefore, the petition is dismissed without prejudice to Servin filing a new petition in the future with exhausted federal claims.

CONCLUSION

The petition is dismissed without prejudice. A certificate of appealability will not issue. *See* 28 U.S.C. § 2253(c). This is not a case in which “jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” *Slack v. McDaniel* 529 U.S. 472, 484 (2000). The Clerk shall enter a separate judgment and close the file.

IT IS SO ORDERED.

Dated: March 25, 2020



VINCE CHHABRIA
United States District Judge